

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

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NORMAN JOSEPH CONKLE, II,  
#213 950

Plaintiff,

v.

STATE OF ALABAMA DEPT. OF  
CORRECTIONS,

Defendant.

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2:09-CV-628-ID  
(WO)

**RECOMMENDATION OF THE MAGISTRATE JUDGE**

Plaintiff filed this complaint on July 6, 2009. On September 30, 2009, before any response to the complaint by the defendants, he filed a motion to dismiss the complaint. Upon review of the file in this case, the court concludes that Plaintiff's motion to dismiss is due to be granted. FED.R.CIV.P. 41(a)(1).

Accordingly, it is the RECOMMENDATION of the Magistrate Judge that Plaintiff's motion to dismiss (*Doc. No. 10*) be GRANTED and that this case be dismissed without prejudice.

It is further

ORDERED that the parties are DIRECTED to file any objections to the Recommendation on or before **October 21, 2009**. Any objections filed must specifically identify the findings in the Magistrate Judge's Recommendation to which a party objects.

Frivolous, conclusive or general objections will not be considered by the District Court. The parties are advised that this Recommendation is not a final order of the court and, therefore, it is not appealable.

Failure to file written objections to the proposed findings and recommendations in the Magistrate Judge's report shall bar the party from a *de novo* determination by the District Court of issues covered in the report and shall bar the party from attacking on appeal factual findings in the report accepted or adopted by the District Court except upon grounds of plain error or manifest injustice. *Nettles v. Wainwright*, 677 F.2d 404 (5<sup>th</sup> Cir. 1982). *See Stein v. Reynolds Securities, Inc.*, 667 F.2d 33 (11<sup>th</sup> Cir. 1982). *See also Bonner v. City of Prichard*, 661 F.2d 1206 (11<sup>th</sup> Cir. 1981) (*en banc*), adopting as binding precedent all of the decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981.

Done this 8<sup>th</sup> day of October, 2009.

/s/Charles S. Coody  
CHARLES S. COODY  
UNITED STATES MAGISTRATE JUDGE